IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 286 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANISH NAVABSING KHANGAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 286 of 2000

MS SADHANA SAGAR for Petitioner No. 1

THROUGH JAIL for Petitioner No. 1

Ms N V Joshi, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/03/2003

ORAL JUDGEMENT

This is an appeal under section 374 of the Code

of Criminal Procedure, 1973 (for short, 'the Code') in order to challenge the judgment and conviction order dated 28.2.2000 recorded by the learned Addl.Sessions Judge, Surat in Sessions Case No.130/98 under which the learned trial Judge convicted the present appellant for offence punishable under section 393 of IPC as well as under section 25 (1-A) of the Arms Act and sentenced the appellant to suffer R.I. for seven years and to pay a fine of Rs. 3000/- and in default of payment of fine to further undergo S.I. for six months for the first offence. For the second offence, the appellant has been directed to suffer R.I. for five years and to pay fine of Rs.2000/- and in default of payment of fine, to undergo further S.I. for four months. The substantive sentence has been ordered to run concurrently. The prosecution case before the trial court was that on 10.3.1998, the original informant and his brother were about to shut his shop at about 8.30 p.m. At that time, the present appellant entered the shop and requested the informant to show a silver ring, at which the informant told him that they did not use to sell silver ring. That therefore, the appellant requested for a golden ring, but the informant told him that such golden ring was not available with him and thereafter the present appellant took out revolver and directed the informant to handover the cash lying in the drawer. Some quarrel took place and other persons rushed to the spot. Even the police also arrived there. The appellant was arrested on the spot and the revolver was seized from him. FIR and charge sheet were filed against the present appellant and his companion and trial was conducted and at the end of the trial, his companion was held not guilty and he was acquitted whereas the appellant was convicted for the aforesaid offence and punishment was inflicted as aforesaid. Feeling aggrieved by the said judgment and order of the trial court, the appellant has preferred this appeal before this court. It was admitted and thereafter it has come up for final hearing. Ms Sadhana Sagar, learned Advocate appears on behalf of the appellant and Ms. N V Joshi, learned APP appears for the State. During the course of hearing it has been noticed that because of the vigilance on the part of the informant and his brother, actual theft or robbery could not take place. The appellant could be arrested on the spot. At the same time it also becomes crystal clear that the appellant could not commit robbery and while in the praocess of committing robbery, he was arrested.

2. In view of the above position, learned Advocate for the appellant does not press this appeal on merit but it is contended that in view of the aforesaid facts and

circumstances of the case, the jail sentence imposed for offence under section 393 of IPC is on higher side and some leniency may be extended to the appellant. Having regard to the facts and circumstances of the case and considering the fact that because of the vigilance and courage on the part of the informant and his brother, the actual offence could not be committed by the appellant. In above view of the matter, I am of the opinion that there is scope for some leniency to be extended to the appellant.

3. For the foregoing reasons, this appeal is partly allowed. The judgment and conviction order recorded by the trial court are ordered to be confirmed. However, with respect to the jail sentence, it is directed that instead of the order passed by the trial court inflicting R.I. for seven years for offence punishable under sections 393 read with 398 of IPC, it is directed that the appellant shall undergo R.I. for six years for offence punishable under section 393 read with section 398 of IPC. Rest of the order for sentence and the judgment and conviction order are confirmed.

4. The quantum of jail sentence is ordered to be modified to the above extent. The quantum of amount of fine of Rs.3000/- and in default of payment of fine, to further undergo S.I. for six months for the first offence imposed by the trial court is reduced to Rs.1000/- and in default of payment of fine, the appellant is directed to suffer S.I. for a period of two months. Same way, the quantum of amount of fine for offence under section 25 (1-A) imposed by the trial court is also reduced to Rs. 1000/- and in default of payment of fine, the appellant is directed to suffer S.I. for a period of two months.

20.3.2003 [D P Buch, J.]
msp